IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL GARRETT WILLIAMS, TDCJ-ID No 317838, Petitioner,	§ § §	
v.	§ § §	Civil Action No. H-06-1564
RICK THALER,[1] Director, Texas Department of Criminal Justice, Correctional Institutions Division, Respondent.	§ § § §	

RESPONDENT'S RESPONSE TO THE COURT'S ORDER OF SEPTEMBER 4, 2009

This is a habeas corpus case brought under 28 U.S.C. § 2254 in which Williams challenges the constitutionality of his parole revocation proceeding. This Court denied the writ, but the Fifth Circuit reversed and remanded. *Williams v. Quarterman,* 2009 WL 73154 (5th Cir. Jan. 13, 2009). On February 5, 2009, this Court provisionally granted the writ and ordered Williams released from custody unless the State of Texas initiated a new parole revocation proceeding against him within 180 days "to allow testimony from three witnesses who were precluded from testifying at his original revocation hearing." Thereafter, the Director advised the Court that documentation from the Texas

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1 The previous named respondent in this action was Nathaniel Quarterman. Effective July 15, 2009, Rick Thaler succeeded Quarterman as Director of the Texas Department of Criminal Justice, Correctional Institutions Division. Under Rule 25(d)(1) of the Federal Rules of Civil Procedure, Thaler is automatically substituted as a party.

Board of Pardons and Paroles ("the Board") showed that on March 12, 2009, Williams was given a new partial revocation hearing that was free of the constitutional infirmities that were present in the original hearing.

Williams then filed the following pleadings: (1) Objections to Respondent's Advisory to the Court, (2) Motion for Contempt of Court, and (3) Motion To Enforce Court's Orders. Therein, he complained that the March 12th hearing did not remedy the constitutional violations that tainted his original hearing. Specifically, Williams alleges that no evidence against him was presented at the new hearing, he was not allowed to present evidence, and he was allowed to present the testimony of only one witness. On September 4th, the Court ordered the Director to respond to Williams's objections and motions.

Attached hereto as an exhibit is documentation from the Board, including (1) an affidavit from Michael Billings, director of operations for the Board, (2) the Board's minutes, and (3) the Board's supplemental re-opening report. Those documents show that Williams was afforded an opportunity to call all three of the witnesses who were improperly excluded from the initial hearing – George Henderson, Ollen McHenry Nugent, and Samuel James Oakley, Jr. Only Oakley testified, however, because Nugent is dead, and although Henderson was served with a subpoena, he did not appear the hearing. Billings Affidavit at 2. Because Williams was allowed to call all three witnesses, he received all the relief to which he was entitled.

Williams's complaints are ill-founded because they ignore the specific directives of the Fifth Circuit and this Court on remand – that he be allowed to call the three improperly excluded witnesses. Where, as here, the Fifth Circuit reverses and remands for a new hearing, the district court "can consider whatever [the Fifth Circuit] directs – no more, no less." *United States v. Marmolejo,* 139 F.3d 528, 531 (5th Cir. 1998). Indeed, even if the Fifth Circuit's opinion had not limited the scope of remand, that would "not imply that a full-blown . . . hearing was permissible for a second time, allowing evidence on all issues . . . ." *Id. See also United States v. Lee,* 358 F.3d 315, 320 (5th Cir. 2004) (district court must comply on remand with the appellate court's mandate by addressing "only those discrete, particular issues identified by the appellate court for remand").

This Court's order granting the writ heeded these admonitions in providing only that Williams be allowed to call the three excluded witnesses. The Board's action in reopening the hearing addressed this concern, and neither this Court's order nor the Fifth Circuit's opinion called for anything further.

CONCLUSION

The Director respectfully requests that Williams's Objections to Respondent's Advisory to the Court be overruled and that his Motion for Contempt of Court and Motion To Enforce Court's Orders be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing pleading was served by placing it in the United States mail, postage prepaid, on this the 30th day of September, 2009, addressed to:

Michael Williams
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Stiles Unit
3060 FM 3514
Beaumont, Texas 77705.

/s/ Charles A. Palmer
CHARLES A. PALMER
Assistant Attorney General